

Appl. No. 09/821,230
Amdt. Dated March 16, 2004
Reply to Office Action of December 16, 2003

• • REMARKS/ARGUMENTS • •

The Official Action of December 16, 2003 has been thoroughly studied. Accordingly the changes presented herein for the claims, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, independent claim 1 has been changed to recite that the inelastically stretchable layer is formed from inelastically stretchable continuous fibers.

This change to the claims is supported by the manner in which the inelastically stretchable layer is formed as described in reference to Fig. 3.

Also by the present amendment claim 1 has been changed to recite "an elastically stretchable fibrous layer."

Support for this change, as pointed out by the Examiner, is found on page 8, lines 7-11 of applicants' specification.

In addition, "is" has been changed to "in" in line 9 of claim 1.

Entry of the changes to the claims is respectfully requested.

Claims 1 and 2 are pending in this application.

On page 2 of the Official Action the Examiner rejected claims 1 and 2 under 35 U.S.C. §112, first paragraph.

Appl. No. 09/821,230
Amdt. Dated March 16, 2004
Reply to Office Action of December 16, 2003

Under this rejection the Examiner took the position that the specification was not enabling for an elastically stretchable layer that was a film.

In response to this rejection claim 1 has been amended to recite "an elastically stretchable fibrous layer" as noted above.

This change to the claims is believed to be responsive to and to overcome the outstanding rejection of the claims under 35 U.S.C. §112, first paragraph.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,116,662 to Morman.

Claims 1 and 2 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Morman.

For the reasons set forth below, it is submitted that each of the pending claims are patentable over the prior art relied upon by the Examiner and therefore, the outstanding rejection of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Morman as:

...describing a composite elastic material which has at least one elastic layer, (which corresponds to the claimed elastically stretchable layer), (column 3, lines 30-33). Morman describes the elastic layer is joined to at least one necked material at least at three locations arranged in a nonlinear configuration (which corresponds to the claimed inelastically stretchable fibrous layer which is bonded orthogonally), (column 3, lines 33-36). Morman describes the composite elastic material has a stretch and recovery in at least one direction, which corresponds to the claimed inelastic fibrous layer in substantially one direction), (column 3, lines 35-52).

Appl. No. 09/821,230

Amdt. Dated March 16, 2004

Reply to Office Action of December 16, 2003

Applicants' independent claim 1 requires, in part that the inelastically stretchable layer is formed from continuous fibers and that the continuous fibers are oriented substantially in one direction.

The necked material of Morman, which the Examiner construes to be applicants' claimed inelastically stretchable fibrous layer is described in detail at column 4, lines 44-58. Further description of the necked material can be found at column 7, lines 31-56.

As the Examiner will note, Morman **does not** teach that the necked material is formed from fibers that are continuous and which are oriented substantially in one direction.

The Examiner will note that the art is replete with references that teach material layers that are made from "continuous fibers" so that this term and the structure which it describes are well known in the art.

Morman **does not** teach or suggest that the necked material is formed from continuous fibers, let alone that the continuous fibers are oriented in a common direction.

To the contrary, at column 7, lines 33-45 Morman teaches that the fibers of the necked material are "randomly dispersed to form a coherent."

At column 7, lines 50-53 Morman teaches generating or increasing fiber entanglement in the necked material.

Clearly Morman teaches against, or at least away from, forming the necked materials from continuous fibers that are oriented in a common direction, according to the present invention.

Accordingly, Morman **cannot** be relied upon as anticipating applicants' claimed invention.

Appl. No. 09/821,230
Amdt. Dated March 16, 2004
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The Examiner has taken the position that:

It would have been obvious....to optimize the stretch efficiency in one direction motivated with the expectation that Morman describes the general conditions of the claimed invention it has been held that discovering optimum value for ranges, corresponding to the stretch efficiency involves only routine skill in this art, *In re Aller*, 105 USPQ 233.

In re Aller the patent claim on appeal was found to encompass a prior art process for treating isopropyl benzene hydroperoxide with sulphuric acid wherein the hydroperoxide is decomposed into phenol and acetone.

The court found that "[t]he process of appellants is identical with that of the prior art, except that applicants' claims specify lower temperatures and higher sulphuric acid concentrations than are shown in the reference."

The court considered arguments submitted by appellants regarding unexpected results which could not be discovered by one skilled in the art.

The court held that appellants' claimed process was merely different in degree and not in kind from the reference process so that criticality of the claimed ranges was not shown.

The facts and holding of *In re Aller*, are not at all applicable to the present situation in which Morman is not at all concerned with tensile strength ratios. (Note the criticality reviewed by the court in *Aller* involved reaction yields, reactants and products).

In the present case there is no teaching, suggestion or reference to controlling the *alignment* of the fibers of the inelastic layer in Morman to achieve a particular tensile ratio or stretch efficiency. As noted above, Morman actually teaches away from aligning the fibers along a common direction.

Appl. No. 09/821,230
Amdt. Dated March 16, 2004
Reply to Office Action of December 16, 2003

Accordingly, the differences between Morman and the present invention do not involve a marginal degree as in the case of *In re Aller*.

Therefore, the Examiner cannot rely upon *In re Aller* as supporting the conclusion that "It would have been obvious....to optimize the ratio of the tensile strengths in the first direction to the second direction."

Morman simple does not teach or suggest the optimization, any benefit or motivation for the optimization, or applicants' particular manner for affecting the tensile strength.

Based upon the above distinctions between Morman and the present invention, and the overall teachings of Morman, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon Morman as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover, it is submitted that the Examiner cannot properly rely upon Morman under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon Morman would be improper inasmuch as Morman does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of Morman and the outstanding rejections of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

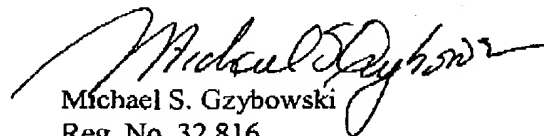
Appl. No. 09/821,230
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It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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